

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.106.2301 and 37.106.2311) PROPOSED AMENDMENT
pertaining to hospice facilities)

TO: All Concerned Persons

1. On November 12, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951; telephone (406)444-9503; fax (406)444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.2301 MINIMUM STANDARDS FOR A HOSPICE PROGRAM:
GENERAL (1) through (1)(j) remain the same.

(k) "Palliation" means controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana Board of Pharmacy.

(l) "Respite care" means short-term in-patient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

(2) through (2)(b) remain the same.

(3) A hospice program must have the following organizational components:

(a) a formally established governing body, individual, group, or corporation with authority to make decisions affecting the operation of the hospice;

(b) an organization chart defining reporting relationships among hospice workers;

(c) A statement of patient rights and the rights of a patient's family;

(d) through (vii) remain the same.

(e) ~~D~~development of annual budgets; and

(f) ~~A~~ annual evaluation of each aspect of the hospice program, including the program's quality assessment and improvement measures and a system to implement recommendations for future program planning.

(4) A hospice program must have an interdisciplinary team responsible for the provision of hospice care. The interdisciplinary team must:

(a) ~~C~~onfer or meet regularly;

(b) ~~H~~ave responsibility for implementation of each individual plan of care as directed by an identified coordinator; and

(c) ~~E~~ncourage the patient/family to participate in developing the interdisciplinary team plan of care and in the provision of hospice services.

(5) remains the same.

(6) A hospice program must maintain a medical record for every individual accepted as a hospice patient. The medical record must include:

(a) patient identification, diagnosis, and prognosis;

(b) through (f) remain the same.

(7) A hospice program which utilizes volunteers must provide volunteer training which includes:

(a) remains the same.

(b) instruction on the volunteer's role, responsibilities, restrictions, and expectations; and

(c) information concerning the physical, emotional, and spiritual issues encountered by hospice patients and families.

(8) and (9) remain the same.

(10) A hospice program must:

(a) remains the same.

(b) monitor and assess the quality of contract services through annual review;

(c) ensure that hospice nursing emergency care is available on a 24-hour basis;

(d) and (e) remain the same.

(11) The hospice program must comply with ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905, and 37.106.2908, pertaining to restraints, safety devices, assistive devices, and postural supports.

AUTH: 50-5-103, 50-5-210, MCA

IMP: 50-5-103, 50-5-204, 50-5-210, MCA

37.106.2311 MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1) A residential hospice facility must meet all of the requirements contained in ARM 37.106.2301, in addition to those contained in this rule.

(2) through (3)(f) remain the same.

(4) A residential hospice must assure that individuals providing personal care to residential hospice patients have received, prior to delivering such care, documented training that includes the following elements, or the documented equivalent of such training:

(a) through (k) remain the same.

(l) health oriented record keeping, ~~including time/employment records.~~

(5) A residential hospice facility must meet the life-safety requirements set forth in chapters ~~22 and 23~~ 32 and 33, Life Safety Code Handbook, National Fire Protection Association, ~~1994~~ 2000 Edition, for residential board and care occupancies.

(6) In patient areas, a residential hospice must:

(a) through (e) remain the same.

(f) be equipped with furnishings which are home-like in design and function and contribute to a safe environment; and

(g) remains the same.

(7) In patient bedrooms, a residential hospice must:

(a) through (f) remain the same.

(g) in each two-bed room, provide either flame-resistant cubicle curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident patient; and

(h) remains the same.

(8) A residential hospice must provide the following bathroom and toilet facilities:

(a) through (d) remain the same.

(e) all doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside. Dutch doors, bi-folding doors, sliding pocket doors, and other bi-swing doors may be used if they do not impede the bathroom access width and are approved by the department. A shared bathroom with two means of access is also acceptable; and

~~(e)~~ (f) if the needs of a patient require a call system or communication device to be in place in the patient's bathroom, make it available; otherwise, the hospice may, but is not required to, provide a patient bathroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(9) A residential hospice must do the following for infection control:

(a) remains the same.

(b) develop a procedure to monitor the infection control program on a regular basis; and

(c) remains the same.

(10) A residential hospice must meet the following meal service, menu planning, and supervision standards:

(a) ~~F~~foods must be served in amounts and variety to meet the needs of each hospice patient.

(b) ~~T~~the hospice must provide a practical freedom-of-choice diet to patients and assure that patients' favorite foods are included in their diets whenever possible.

(c) ~~T~~the food service must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling that are sufficient to prevent food spoilage and transmission of infectious disease. shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, Food Service Establishments administered by the Food and Consumer Safety Section of the Department of Public Health and Human Services.

(d) through (e) remain the same.

(11) In order to provide pharmaceutical services to patients, a residential hospice must:

(a) ~~D~~evelop and maintain a system for the administration and provision of pharmaceutical services that are consistent with the drug therapy needs of the patient as determined by the hospice medical director and patient's primary physician;

(b) ~~E~~ensure that medications ordered are consistent with the hospice philosophy which focuses on palliation, ~~i.e., controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana board of pharmacy;~~

(c) ~~E~~ensure that all prescription medications are ordered in writing by someone licensed to write prescriptions under Montana state law, dispensed by a licensed pharmacy, received by the patient, ~~or the patient's family, or other designated individual(s),~~ and maintained in the hospice;

(d) ~~U~~nless the pharmacy provides a unit dose system, ensure that all prescription drugs are labeled with a label that includes:

(i) through (ix) remain the same.

(e) ~~D~~document all medication administration in the patient's record;

(f) ~~E~~ensure that medications are administered only by one of the following individuals:

(i) remains the same.

(ii) the patient or patient's family if the physician allows them to do so and an order acknowledging that fact is noted in the hospice care plan; and

(iii) remains the same.

(g) ~~A~~allow medications to be left at the bedside of a hospice patient when to do so is approved in the hospice plan of care, and, whenever such approval exists, provide for the storage of such medications in a safe and sanitary manner;

(h) ~~E~~ensure that medications not stored at the bedside are maintained in locked storage in a central location in the hospice that is near or adjacent to an area for medication preparation and has appropriate refrigeration, a sink for handwashing, and locking cabinets;

(i) ~~D~~destroy medications when the label is mutilated or indistinct, the medication is beyond the expiration or shelf life date, or unused portions remain due to discontinuance of use or death or discharge of the patient; and

(j) ~~D~~develop and follow written policies and procedures for destruction of legend drugs that include listing the type of drug(s) destroyed and the amount destroyed.

(12) The department ~~hereby~~ adopts and incorporates by reference chapters ~~22 and 23~~ 32 and 33 of the Life Safety Code Handbook, National Fire Protection Association, ~~1994~~ 2000 Edition, which establishes building construction requirements for residential board and care occupancies. Copies of the above standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MD 02269 02169, or by using their web site, www.nfpa.org.catalogue.

(13) Respite care may be provided only on an occasional basis for no more than five consecutive days at a time.

AUTH: 50-5-103, 50-5-201, MCA
IMP: 50-5-210, MCA

4. The department has reviewed the current administrative rules for the minimum standards for hospice facilities, ARM 37.106.2301 through 37.106.2311, and has determined that the following changes need to be made.

The definition of "palliation" found currently in ARM 37.106.2311(11)(b) has been moved to ARM 37.106.2301(1)(k), for rule format consistency.

A definition for "respite care" has been added to ARM 37.106.2301(1)(l), Minimum Standards for a Hospice Program: General. This definition is required to assist licensed only residential hospice providers under ARM 37.106.2311, Minimum Standards for a Residential Hospice Facility, in clarifying what respite care is. Further, the definition uses the terminology found in 42 CFR 418.204, which is referenced in ARM 37.106.2305, to support consistency in the continuity of patient/family care provided in home, outpatient, and in-patient settings.

Currently ARM 37.106.2301(3)(a) requires a "governing body", assuming that the hospice is a not-for-profit organization. However, hospices do exist that are run by individuals, groups, or corporations for profit. To address for profit hospice governance structure "individual, group, or corporation" has been added to the rule.

Clarification for contract service review has been added to ARM 37.106.2301(10)(b), Minimum Standards for a Hospice Program: General. During on-site surveys hospice programs frequently have outdated and/or expired contracts. This proposed addition will require an annual review of the contract services to ensure the quality and access of services to the program when or should the services be needed by the hospice family and/or patient.

ARM 37.106.2301(11) has been added to ensure the appropriate and safe use and application of safety devices for the hospice patients. Sections 50-5-1201 through 50-5-1205, MCA, Safety Devices in Long-Term Care Facilities, were enacted by the 2001 Montana Legislature. These statutes provide for informed consent for the use of certain safety devices aimed at ensuring the physical safety of individuals by reducing the risk of falls and injury associated with medical symptoms. The department finds that the patients under hospice care meet the definition of long-term care facility patients, and so the need for assurance of informed consent for the use of certain safety devices, just as those individuals who reside or are admitted to other health care facilities or health care programs. Additionally, conflicts have occurred when a hospice patient residing in an assisted living facility obtains and uses full length bed rails, which are prohibited in assisted living facilities under 50-5-226(2)(a), MCA. By requiring all hospice programs to comply with ARM 37.106.2901 through 37.106.2908, the safety and well-being of hospice patients is improved, as well as the cooperation and communication between hospice personnel and assisted living staff.

The verbiage "including time/employment records" has been struck from ARM 37.106.2311(4)(l), Minimum Standards for a Residential Hospice, which defines documentation requirements of the health oriented record keeping. The time/employment records are not part of the hospice patient's health-oriented record. This documentation is related to and essential for business management and employee records, not the patient's health-orientated record.

The 1994 Edition of the Life Safety Code Handbook, National Fire Protection Association has been updated to the 2000 Edition with the correct corresponding sections in ARM 37.106.2311(5) and (12), Minimum Standards for a Residential Hospice and address and web site.

"Resident" has been struck and replaced with "Patient" in ARM 37.106.2311(7)(g) for rule language consistency.

To ensure the safety of the frail terminally ill patient in the event of a fall and/or entrapment in a patient bathroom, ARM 37.106.2311(8)(e), Minimum Standards for a Residential Hospice has been added.

Reference to ARM Title 37, chapter 110, subchapter 2, Food Service Establishments administered by the Food and Consumer Safety Section of the department has been added to ARM 37.106.2311(10)(c), Minimum Standards for a Residential Hospice striking the general terminology currently contained in the rule. ARM Title 37, chapter 106, subchapter 2 provides the facility with the details in establishing and maintaining standards for food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving, and handling to prevent food spoilage and transmission of infectious disease as listed in the current rule.

The definition for "palliation" currently is contained in ARM 37.106.2311(11)(b), Minimum Standards for a Residential Hospice. To maintain rule format the definition has been struck and moved to ARM 37.106.2301(1)(k).

Often hospice care involves the utilization of a variety of individuals assisting the terminally ill patient. The phrase "or designated individual(s)" has been added to ARM 37.106.2311(11)(c), Minimum Standards for a Residential Hospice to include other individuals who may be able to receive the patient's medication on behalf of the patient or the patient's family, including hospice staff.

To maintain consistency in the continuity of care between in-patient and residential care, the criteria for respite care found in 42 CFS 418.204 has been added in ARM 37.106.2311(13), Minimum Standards for a Residential Hospice. This allows Residential Hospice facilities that provide short-term in-patient care to individuals when it is necessary to relieve family members or other persons caring for the dying individual.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951, no later than 5:00 p.m. on November 20, 2008. Comments may also be faxed to (406)444-9744 or e-mailed dphhslegal@mt.gov.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Lisa Swanson
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2008.